

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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MICHELLE BAGLEY; SHARAN	:	
HARPER, GARY MILLINE; HAMILTON	:	
SMITH; MARCELLA URBAN and other	:	
similarly situated individuals,	:	
	:	15-cv-4845 (FB) (CLP)
Plaintiffs,	:	
	:	
-against-	:	
	:	
THE NEW YORK STATE DEPARTMENT	:	
OF HEALTH , HOWARD ZUCKER,	:	
COMMISSIONER OF THE NEW YORK	:	
STATE DEPARTMENT OF HEALTH, in	:	
his official capacity, and VISITING NURSE:	:	
ASSOCIATION HEALTH CARE	:	
SERVICES, INC., d/b/a VNA of STATEN	:	
ISLAND,	:	
	:	
Defendants.	:	
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**STIPULATION AND [PROPOSED] ORDER REGARDING DEFENDANTS'  
PRODUCTION OF APPLICANT FILES**

**WHEREAS**, Plaintiffs Michelle Bagley, Gary Milline, Hamilton Smith, Marcella Urban, Sharan Harper, and other similarly situated individuals (collectively “Plaintiffs”) served the Second Sets of Interrogatories, dated October 7, 2019 (the “October 7, 2019 Interrogatories”), on Defendants the New York State Department of Health and Howard Zucker (“DOH”) and the Visiting Nurse Association of Staten Island (“VNASI”)<sup>1</sup> seeking certain information related to the putative class members as alleged by Plaintiffs in their First Amended Complaint; and

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<sup>1</sup> DOH and VNASI are collectively referred to as “Defendants.” Plaintiffs, DOH, and VNASI are collectively referred to as the “Parties.”

**WHEREAS**, Defendants objected to the Interrogatories and advised Plaintiffs that, to the extent that the Defendants have custody, possession or control of the information requested in the October 7, 2019 Interrogatories, that information is maintained in referral and application files concerning individuals who applied to the NHTD Medicaid Waiver Program during the period August 1, 2012 through October 31, 2019 (the “Applicant Files”); and

**WHEREAS**, VNASI is no longer the New York City Regional Resource Development Center (“RRDC”) for the Nursing Home Transition and Diversion (“NHTD”) Medicaid Waiver Program and the NHTD Medicaid Waiver Program was transitioned to Westchester Independent Living Center (“WILC”) as of November 1, 2019; and

**WHEREAS**, VNASI has provided the Applicant Files to WILC; and

**WHEREAS**, Plaintiffs moved to compel Defendants’ response to the October 7, 2019 Interrogatories and/or to produce copies of the Applicant Files for all putative class members in this action (*see, e.g.*, Docket No. 131 and 136); and

**WHEREAS**, on November 5, 2019, the Court ordered that, in lieu of a written response to the October 7, 2019 Interrogatories, Defendants shall produce the Applicant Files to Plaintiffs’ for their review, and further ordered that Plaintiffs were to draft a proposed written Order, with Defendants’ review, setting forth the particulars of that production; and

**WHEREAS**, Plaintiffs and DOH conferred and have reached an agreement concerning the production of Applicant Files that are available in electronic form (“Electronic Applicant Files”); and

**WHEREAS**, WILC has been apprised that the Court ordered the production of the Applicant Files and has provided DOH with a copy of electronic files believed to contain the Electronic Applicant Files in its possession; and

**WHEREAS**, DOH will undertake a limited initial review of the electronic files provided by WILC for the sole purpose of determining whether the files are in fact NHTD waiver Applicant Files.

**NOW THEREFORE**, the Parties stipulate and agree, and it is hereby ordered that:

1. Defendant DOH shall produce all Electronic Applicant Files on or before December 10, 2019;
2. In the interests of efficiency and expediency, DOH may produce the Electronic Applicant Files in the format that they are currently stored, without appending bates numbers or confidentiality stamps to each page. The Parties agree that the Electronic Applicant Files shall be subject to the December 20, 2017 Confidentiality Agreement and Protective Order (the “Protective Order”) and treated as “CONFIDENTIAL” documents pursuant to the terms of that order, notwithstanding the fact that the documents are not individually stamped “CONFIDENTIAL” on each page.
3. Plaintiffs reserve all rights to seek the production of the Electronic Applicant Files in some other format (*e.g.*, electronically processed and provided in usable form) if they are unable to review and/or access the contemplated production of Electronic Applicant Files.
4. The Parties shall meet and confer on or before February 5, 2020 regarding the need for production of any Applicant Files that are available in paper form (“Paper Applicant Files”), and shall raise any disputes concerning that issue to the Court no later than February 18, 2020.

November 18, 2019

MICHELLE BAGLEY; GARY MILLINE;  
HAMILTON SMITH; MARCELLA URBAN;  
SHARAN HARPER; and other similarly  
situated individuals

THE NEW YORK STATE DEPARTMENT OF  
HEALTH and HOWARD ZUCKER,  
COMMISSIONER OF THE NEW YORK STATE  
DEPARTMENT OF HEALTH in his official  
capacity

By: /s/ Michael F. Buchanan

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VISITING NURSE ASSOCIATION :  
HEALTH CARE SERVICES, INC., d/b/a VNA  
of STATEN ISLAND

By: /s/ Laura B. Juffa

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**SO ORDERED:**

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